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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 CU VAN TRUONG,

09 Plaintiff,

Case No. C12-0309-MJP-MAT

10 v.

11 CITY OF SEATTLE, *et al.*,

REPORT AND RECOMMENDATION

12 Defendants.

13 On February 22, 2012, plaintiff submitted to the Court for filing a civil rights complaint  
14 under 42 U.S.C. § 1983. (*See* Dkt. No. 1.) Plaintiff appeared to allege in his complaint that he  
15 was being prosecuted based upon his race and his past history, and that there was insufficient  
16 evidence to support the charges being pursued against him. (*Id.*) Plaintiff also alleged that  
17 the police had fabricated evidence against him. (*Id.*) Plaintiff identified the City of Seattle,  
18 the Prosecutor's Office, and the Seattle Police Department as defendants in the case, and he  
19 requested relief in the form of compensatory and punitive damages. (*Id.*)

20 On March 8, 2012, plaintiff filed an application for leave to proceed with this action *in*  
21 *forma pauperis*. (Dkt. No. 4.) Plaintiff's application was granted on April 17, 2012, and his  
22 complaint was filed. (Dkt. Nos. 5 and 6.) On the same date, this Court issued an Order

REPORT AND RECOMMENDATION

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01 declining to serve plaintiff's complaint and granting him leave to amend to demonstrate that his  
02 claims were cognizable under § 1983. (Dkt. No. 8.) The Court noted in its Order that the  
03 allegations set forth in the complaint appeared to arise out of a criminal investigation of plaintiff  
04 and an ongoing criminal prosecution in the state courts. (*See id.*) The Court further noted that  
05 it appeared likely a decision in plaintiff's favor on the claims asserted in his complaint would  
06 call into question the validity of his present confinement and, thus, that plaintiff would have to  
07 demonstrate his claims were not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), before he  
08 would be permitted to proceed with this action.<sup>1</sup> (*See id.*) Plaintiff was granted thirty days  
09 within which to file an amended complaint demonstrating that his claims were not barred by  
10 *Heck*. (*Id.*) To date, plaintiff has not filed an amended complaint.

11 Because plaintiff failed to file an amended complaint demonstrating that his claims are  
12 cognizable in this civil rights action, this Court recommends that plaintiff's complaint, and this  
13 action, be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). A proposed  
14 order accompanies this Report and Recommendation.

15 DATED this 6th day of July, 2012.

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18 Mary Alice Theiler  
19 United States Magistrate Judge  
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<sup>1</sup> In *Heck*, the United States Supreme Court held that a § 1983 claim that calls into question the  
lawfulness of a plaintiff's conviction or confinement does not accrue "unless and until the conviction or sentence is  
reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Heck*, 512 U.S. at 489.